

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**February 23, 2005**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Lalwani** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams  
Absent: None  
Staff: Carrington, Lindsay, Pereira, Rodriguez and Wong

**III  
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
February 9, 2005**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of February 9, 2005.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Galang/Mohsin

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

There were no announcements from staff.

**VI.  
CONFLICT  
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.  
APPROVAL OF  
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda.

M/S: Mandal/Galang

AYES: 7

NOES: 0

**VIII.  
CONSENT CALENDAR  
Consent Item No. 2**

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

**Vice Chair Garcia** requested Consent Item No. 2 (Revisions to Stormwater C.3 Guidebook) be removed from the calendar. The Commission agreed.

**IX.  
PUBLIC HEARING**

**1. SITE AND  
ARCHITECTURAL  
AMENDMENT NO.  
SA2004-123**

**Staci Pereira, Assistant Planner**, presented Site and Architectural amendment No. SA2004-123, request to permit five accessory structures, site lighting and a perimeter property fence for a hillside residence located at 1594 Pebble Beach Court and recommended approval to City Council.

**Commissioner Mohsin** asked what are the standards for the light fixtures in the hillside area. Ms. Pereira replied that there is not a standard in the zoning ordinance and that is why staff is recommending that the applicant submit a lighting level plan.

Commissioner Mohsin asked how does staff assess the brightness of the light. Ms. Pereira responded that the applicant would submit a plan to make sure that the light does not spill onto the street.

Chair Lalwani noted that houses cannot be seen below in the hillside and asked if all of these homes have the same conditions like the applicant. Ms. Pereira agreed with Chair Lalwani and noted that staff performed a site visit and that the home was not visible from the public right of way.

Mr. Lindsay added that the SummitPointe subdivision was built before the hillside ordinance under different regulations.

Chair Lalwani introduced the applicant.

**Jitender Makker, design consultant**, noted that he was available for questions.

There were no questions from the Commission.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

**Close public hearing**

**Motion** to close the public hearing.

M/S: Williams/Azevedo

AYES: 7

NOES: 0

**Motion** to recommend approval to City Council for Site and Architectural Amendment No. SA2004-123.

M/S: Galang/Mandal

AYES: 7

NOES: 0

## 2. REVISIONS TO STORMWATER C.3 GUIDEBOOK

**Dennis Carrington, Senior Planner**, presented revisions to the Stormwater C.3 Guidebook to update requirements for operations and maintenance (O&M) and new appendices addressing preparation of O&M plans, a C.3 checklist, data collection, guidelines for O&M inspectors, a "Fact Sheet" explaining the new C.3 rules for development projects and minor changes including addition of pesticide reduction requirements by use of such practices as pest-resistant plants. Mr. Carrington recommended approving Planning Commission Resolution No. 498 and adopting the Stormwater C.3 Guidebook.

Vice Chair Garcia thought staff did a great job helping a contractor or anyone trying to do a construction project in Milpitas and felt it sets a standard for how to help a developer in the city. He is concerned about the resolution that has to do with provision C.3 c which requires stormwater treatment BMP's be incorporated into projects that create more than 1 acre of impervious area, and also provides that the threshold will be reduced on April 15, 2005 to 10,000 square feet of impervious surface area. He noted that it is quite a change, and that changes the dynamics of development in the City. He asked staff how would the threshold effect new projects and what are the impacts.

Mr. Carrington replied that the change is determined by the Regional Water Quality Control Board (RWQCB) and is not something the City chooses. He explained that Group one, which went into effect awhile back, requires the one acre threshold for projects and Group 2 which is anticipated to go in effect on April 15, 2005, will be the 10,000 square foot threshold.

Vice Chair Garcia asked what will the impacts be after April 15<sup>th</sup>. Mr. Carrington explained that any project that would be found complete after that date would be subject to the 10,000 square feet requirement. Stormwater control plans would be required for any project that has 10,000 square feet or more of impervious area.

Vice Chair Garcia asked what kind of projects fall into that category. Mr. Carrington noted a large gas station or an apartment complex.

Vice Chair Garcia noted that he is concerned as the City is going into more infill projects, it changes the pricing for how to mitigate the stormwater issues. Mr. Carrington pointed out that hopefully over time, through standard conditions of approval, it would reduce pollution to the bay and allow for more projects to conform to the regulations.

Vice Chair Garcia asked if the City has gone to the RWQCB and asked for a delay in the Group 2.

**Darryl Wong, Utility Engineer**, responded staff has been part of a regional effort with other cities in negotiations with the Board to come up with mechanisms to comply with requirements in the permit and the 10,000 threshold. As part of the negotiations, staff has tried to get some relief in terms of delays in the application to come up with a mechanism to apply the 10,000 square feet on a reasonable basis. The permit allows staff to come up with alternatives to 10,000 and that is what staff is trying to come up with. He explained that staff is working on waivers, which is granting exceptions to harsher cases such as not having availability on the site, and also if the cost of the treatment facility is a total of 2% of the project, then it would be considered a waiver. Staff is currently working on the waiver program and are going through negotiations.

Vice Chair Garcia asked if the Commission should vote on this resolution tonight or could it be delayed until staff meets with the RWQCB. Mr. Wong commented that staff would like to proceed with this and have the document available to developers. The process of the exceptions may take a little bit of time to complete. The Guidebook does make reference to an exception process.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

## **Close the public hearing**

Motion to close the public hearing.

M/S: Galang/Mandal

AYES: 7

NOES: 0

**Commissioner Williams** commented that he was on the Commission when the Guidebook was put together and the document has really come a long way and commends staff for the excellent improvements. Commissioner Mandal echoed Commissioner Williams's comments.

Chair Lalwani asked if the Guidebook is automatically given to developers or do they have to ask for it. Mr. Carrington responded that the developers are given the document.

**Motion** to approve Planning Commission Resolution No. 498 adopting the Stormwater C.3 Guidebook.

M/S: Williams/Mandal

AYES: 7

NOES: 0

## **X. OLD BUSINESS**

### **3. REPORT ON IMPACTS OF QUASI PUBLIC USES IN INDUSTRIAL ZONES**

**James Lindsay, Acting Planning Manager**, presented a report on the impacts of quasi-public uses in the industrial zoning districts.

**Commissioner Mandal** commented that the City has been providing opportunities for many organizations to open up cultural centers in industrial areas. He recalled in Santa Clara, LSI Logic wanted to expand in an industrial area, and it resulted in a lawsuit, which made it a difficult situation. He asked Mr. Lindsay why he is recommending that only schools and hospitals be eliminated from the industrial area..

Mr. Lindsay noted that he talked with the gentleman at LSI Logic that dealt directly with the school and daycare operation in the City of Santa Clara. He noted that this gentleman had quite a bit of information and had a lot of concerns about what happened in Santa Clara. Once that school located there, LSI Logic chose, among other reasons to no longer to make an investment in their manufacturing facility there. Staff noticed that within the Silicon Valley Manufacturing Group's policy statement is a summary of all the environmental regulations that businesses have to comply with. Schools, daycare and hospitals are addressed in these regulations because of the high concentration of sensitive populations such as children and the elderly present for a long period of time. Schools and daycare centers are required to provide outside play areas. Milpitas currently does not have these uses in the industrial area, and we have no pending applications so it is an excellent opportunity.

Commissioner Mandal noted that it is very important to understand the situation because there was a lot of negativity and misunderstanding regarding the school in the industrial area in Santa Clara.

Vice Chair Garcia noted that when he looks at the map he sees the locations and it seems that there is a buffer around the perimeter of the heavy industrial area right off of Milpitas Blvd. where it looks like the City has uses that are not industrial. He asked if there is a way to structure the proposal so that there is a new category where there is a buffer for non industrial uses.

Mr. Lindsay explained that the ones in the Fleming business park are leases and the ones off Los Coches and Calaveras are ownership. Unfortunately, the existing pattern of quasi public uses doesn't provide a nice clean zoning pattern and will have to acknowledge some uses such as the Los Coches Church, where the City may choose to leave it heavy industrial and prohibit quasi public uses and the church would remain there as a non-conforming use and no additional churches would be allowed in.

Vice Chair Garcia noticed in his packet that some of the cities referenced the term "special districts". He asked if it is appropriate to use that term particularly the office areas on the other side of I-880 in the McCarthy area.

Mr. Lindsay explained that special districts are a great tool when retaining the underlying zoning to call out an area as special and unique. For example, the City uses special district in TOD overlay zoning around the light rail station where it is a special district and has special regulations. He recommends that industrial parks on the land west of I-880, except McCarthy Ranch, use standards, because that area makes 90% of our industrial park land, and there wouldn't be any need for special districts.

Vice Chair Garcia asked if there would be any issues with RLUIPA. Mr. Lindsay pointed out that religious institutions would not be treated any differently, only, schools, hospitals and daycares are recommended to be prohibited in the industrial district.

**City Attorney, Kit Faubion**, added that one of the hallmarks of RLUIPA is not to make distinctions between churches and other places of assembly. In this case, there is a distinction between, schools, hospitals and daycares but there are other regulations that make that distinction so it is probably not a RLUIPA issue. If a city were to try and allow a general assembly use but not churches or the other way around, then that is where RLUIPA might be an issue, but she doesn't foresee the program that Mr. Lindsay is suggesting being an issue.

Chair Lalwani asked what is the difference between light industrial and heavy industrial. Mr. Lindsay pointed to the map and noted that the two light industrial districts are on the west side of McCarthy and the KLA Tencor campus and the other areas are heavy industrial.

Chair Lalwani asked if the difference between light and heavy industrial is the type of chemicals being used. Mr. Lindsay replied that there is really not much of a difference between the two and it is the types of uses allowed that brings in the types of chemicals. Staff may suggest an increase in the amount of light industrial zoning and may look at the use pattern and come up with a series of businesses and uses that tend not to use hazardous materials and allow the quasi public uses in that area. Staff may propose to shrink the heavy industrial zoning where the majority of manufacturing have hazardous materials. This would then bring the zoning up to date on how the parcels are actually being used and to provide a separation between uses.

Chair Lalwani asked what are other cities doing. Mr. Lindsay noted that San Jose uses the special district approach. In the general plan they identify industrial areas that are at the fringe of commercial and residential areas and those areas are only where quasi public uses are allowed.

Chair Lalwani asked about fees for property tax. Mr. Lindsay explained that a quasi public use is a service oriented use because they are providing service to the community and non profit organizations are typically tax exempt.

Commissioner Mohsin felt that issue between the school and LSI Logic is an example of an asset to the community. She also noted that there was a band school in the same area and wanted to know what the difference was. She also asked what kind of zoning is the Cisco campus.

Mr. Lindsay replied that there was a regional band facility within the same business park as LSI Logic. The difference was the type of population, quantity of people and consistency of occupation. The band facility was used in the evenings by high school students that were near adult age and was not a high concentration of young children. Mr. Lindsay also stated that Cisco is zoned industrial park.

Commissioner Mohsin pointed out that Cisco has a huge child care center and it is an asset to employees and felt that if the City wants to limit daycares in the industrial area, then it will be a disservice to the employees. She asked how does staff plan to evaluate this.

Mr. Lindsay recalled that when Cisco chose to locate the daycare, there was a lot of environmental review. The daycare center is located in the General Commercial zoning district. He also stated that that Cisco might have a deed restriction to the type of operations they will be doing on the campus. Within the City's Child Care Master Plan, there are unanswered questions of whether the city would change the ordinance to allow daycare facilities in the industrial area and the issue has not come up to Council.

**Commissioner Williams** asked about daycare and healthcare in the areas, and institutions where they have already started to have an internal daycare or health clinic, and they may have grown. He asked if this is this something that falls into the equation that even though the City is concerned about those institutions, it could be a quasi public use that has a mixed condition. He noted that he is trying to understand the bigger picture.

Mr. Lindsay explained that the zoning ordinance lacks the definition of hospital and if hospitals are going to be prohibited than it needs to be defined and should include skilled nursery facilities. He also explained that when businesses evolve, they change from one classification to another, and that does trigger zoning entitlement issues and would have to bring that expansion into conformance with the code.

Commissioners Williams stated he understands now that more thoughts need to be put into this project. He was open about the various institutions until he saw the map that shows potential problems that could be encountered and looks forward to see what transpires on this project in the future.

Commissioner Mandal asked Mr. Lindsay what is the trend of companies coming and going in the City. Mr. Lindsay noted that in his experience, the City is in an import situation where more companies are relocating here than leaving. Overall, he has seen a net increase, however, as far as the trends in business, they are smaller companies.

Commissioner Mandal asked if the small business utilize a lot of the chemicals. Mr. Lindsay responded that the City has seen a departure of manufacturing businesses to overseas and are seeing more traditional research and development facilities.

Commissioner Mandal is concerned that Milpitas has too many regulations and does not want companies to leave. Mr. Lindsay felt that Milpitas is a business friendly environment and we want to be an attractive place to do business and reserving areas where these companies can operate would be very favorable.

**Commissioner Galang** asked if the City has guidelines in regards to shaping and transporting hazardous materials. Mr. Lindsay explained that the City does not regulate the transport of hazardous materials and they are regulated through the State and enforced by the Highway Patrol. The City does require companies to file a hazardous materials businesses plan.

Chair Lalwani asked what if a company wants to open a daycare. Mr. Lindsay explained that the recommendation staff is asking the Commission to forward to the Council has no changes to where daycares can locate. He felt that Commissioner Mohsin brought up an excellent point regarding the importance of daycare centers.

**Motion** to make a recommendation that the City Council direct staff to prepare an ordinance prohibiting schools and hospitals in industrial zones and return with a strategy to cluster other future quasi-public uses in the industrial area.

Mandal/Galang

AYES: 7

NOES: 0

Commissioner Williams asked if the minutes would be part of the package and Mr. Lindsay said yes.

## **XI. NEW BUSINESS**

### **4. STATUS OF ACTIVITY AT 750 EAST CALAVERAS BOULEVARD (FORMER BOLLYWOOD SITE)**

As requested by the Planning Commission, Mr. Lindsay provide an update on the activity concerning 750 E. Calaveras Boulevard and recommended to note receipt and file.

There were no comments from the Commission.

Chair Lalwani called a five minute recess at 8:20 p.m. and the Commission moved to the Committee Meeting Room for the breakout session.

### **5. WORKSESSION ON FINDINGS NECESSARY FOR PLANNING COMMISSION ACTIONS**

City Attorney Kit Faubion presented a worksession on findings necessary for Planning Commission Actions and noted that no action is necessary. She provided a handout to the Commission, which gave examples on the varied aspects of findings. Findings are explanations and define a Planning Commission's exercise of discretion to approve, deny and condition. Findings may be statutory requirement and may be required CEQA findings.

Vice Chair Garcia asked if the Commission is supposed to retain their packet every week. Ms. Faubion suggested that the Commission should keep environmental impact reports because future projects could rely on it.

Commissioner Williams noted that in his six years serving the Commission, if he needed something, he would call staff.

Mr. Lindsay pointed out that staff is now scanning all of the documents on the website and the open government ordinance being considered by Council would require three years of history on the website.

Commissioner Williams recalled that five years ago, the Commission wanted everything electronically, which makes it easier to do electronic research. Progress has been slow, however everything is evolving in the right direction and he is happy that the ordinance is on the website.

The Commission asked Attorney Faubion to explain the Topanga case. She explained that Topanga is a 1980's case that involved a variance. The findings were made, however no one could tell why the decision was made because there was no explanation supporting the findings. She also suggested that the Commission read a book called "Bridging the Gap" which explains raw evidence and the decision.

Mr. Lindsay pointed out a finding in a staff report, and explained staff's role is to put the text in the discussion session to substantiate how the findings can be made.

Attorney Faubion noted that staff states the Commission has to make findings and support each of the findings, and the required findings are in the ordinance.

In response to a question by Chair Lalwani's question regarding variances, Attorney Faubion pointed out that variances should be a topic for another Commission meeting. Variances have been misunderstood in the past and are being treated differently. There are exceptions to the standards and are generally reflected in the city ordinance.

Mr. Lindsay noted that he was looking with the City Attorney at opportunities for future worksession topics. He noted that he would provide another topic on a future agenda.

Mr. Carrington noted that there are courses to take on updates to CEQA through university extensions in Oakland.

## **XII. ADJOURNMENT**

The meeting was adjourned at 8:57 p.m. to the next regular meeting of March 9, 2005.

Respectfully Submitted,

James Lindsay  
Acting Planning Manager

Veronica Rodriguez  
Recording Secretary